

2011 WL 9864732 (Tex.Co.Ct. at Law) (Trial Order)
Texas County Court at Law.
Travis County

ONION CREEK LUXURY APARTMENTS, Plaintiff,
v.
Rebecca POWELL, Defendant.

No. C-1-CV-10-009958.
January 6, 2011.

Findings of Fact and Conclusions of Law

Honorable [Eric Shepperd](#).

In response to the request of Plaintiff Onion Creek Luxury Apartments, the Court makes and files the following Findings of Fact and Conclusions of Law in accordance with Rule 297 of the Texas Rules of Civil Procedure:

FINDINGS OF FACT

1. This is a trial de novo in County Court at Law of an appeal of a Justice of the Peace Court decision in a forcible detainer lawsuit originally filed by Plaintiff, the Onion Creek Luxury Apartments (“Onion Creek”), seeking to evict Defendant, Rebecca Powell (“Ms. Powell”) from her apartment at 1071 S. IH 35, Apt. 1431, Austin, Texas.
2. Ms. Powell has been a resident with Onion Creek since April of 2010.
3. Ms. Powell leases the apartment at 1071 S. IH 35, Apt. 1431, Austin, Texas, from Onion Creek Luxury Apartments, under the terms of a written lease agreement entered into evidence; the term of the lease ends June 24, 2011.
4. Ms. Powell pays monthly rent of \$741.10 for her apartment, per her written lease agreement entered into evidence.
5. The only ground for the termination of Ms. Powell's lease alleged by Onion Creek is nonpayment of rent by Ms. Powell for the month of September 2010.

6. Ms. Powell alleged in her affirmative defenses of waiver as well as promissory estoppel and unclean hands that Onion Creek did not accept her rent.

7. Ms. Powell paid her rent in September 2010 by depositing a check in the Onion Creek drop-box on September 3, 2010.

8. After discovering from her bank that her September rent check had not been cashed, Ms. Powell offered, in a telephone call to Onion Creek on September 8, 2010, to write another check for the September 2010 rent, but Onion Creek told her it would not accept payment.

9. Ms. Powell asked Onion Creek to be allowed to pay her September 2010 rent in a September 9, 2010 letter, entered into evidence.

10. Ms. Powell did not receive a notice to vacate for nonpayment of the September 2010 rent *prior* to the filing of the eviction lawsuit in Justice of the Peace Court on September 8, 2010.

11. Onion Creek filed this eviction case on September 8, 2010.

12. Ms. Powell was not represented by counsel in the Justice of the Peace hearing on September 22, 2010, and she was unable to attend the hearing in person.

13. Ms. Powell timely perfected an appeal to the County Court at Law.

14. As stated in its standard notice to vacate (entered into evidence), Onion Creek has a policy of 1) allowing payment of rent until the 15th of the month by tenants who receive regular payments from the Social Security Administration and provide Social Security documentation to Onion Creek, 2) rescinding late fees for such tenants who pay their rent by the 15th of the month, and 3) not filing an eviction case in such cases until the 16th of the month.

15. Onion Creek follows, as its policy regarding requests by tenants for a reasonable accommodation of their disabilities, the Joint Statement of the Department of Housing and Urban Development and the Department of Justice of Reasonable Accommodations Under the Fair Housing Act, entered into evidence.

16. Ms. Powell is a person with disabilities and is receiving Social Security disability income for her disabilities.

17. Onion Creek acknowledges that Ms. Powell has disabilities and regards her as having disabilities.

18. When Ms. Powell applied for tenancy with Onion Creek, and before signing a lease, she informed Onion Creek, both orally and in her written application, entered into evidence, that she received Social Security disability income on or after the third of each month.

19. When Ms. Powell applied for tenancy with Onion Creek, and before signing a lease, she provided Onion Creek with an award letter for Social Security Disability benefits, offered into evidence, which states that she receives her benefits on or about the third of each month.

20. When Ms. Powell applied for tenancy with Onion Creek, and before signing a lease, Ms. Powell requested, as a reasonable accommodation of her disabilities, that she be allowed to pay her rent on or after the third of each month, and Onion Creek granted this request.

21. It is a reasonable accommodation of Ms. Powell's disabilities for Onion Creek to accept her rent payment on or after the third of each month, and with no late fees or threat of eviction.

22. It is a reasonable accommodation of Ms. Powell's disabilities for Onion Creek to accept her rent payment on or after the third of each month until the fifteenth of the month, with no late fees or threat of eviction.

23. From April 2010 through September of 2010, when this case was filed, Ms. Powell always paid her rent after the first of the month, including on or after the third of the month.

24. Onion Creek had a pattern and practice of accepting late rent from Ms. Powell, and Onion Creek did not inform her that they would no longer accept late rent from her or charge her late fees for paying rent late.

25. Ms. Powell complained repeatedly to Onion Creek management about repair problems with her unit.

26. On August 16, 2010, Ms. Powell sent a letter (entered into evidence) via certified mail return receipt, to Onion Creek listing 13 different unresolved repair complaints that she believed affected her health and safety.

27. On September 20, 2010, Onion Creek posted a Belief of Abandonment notice (entered into evidence) on Ms. Powell's door, even though the unit had not been unoccupied for five days with rent unpaid or gas, water, or electric service terminated, and furniture and clothing had not been removed from the unit.

28. A reasonable fee in Travis County for representation of Ms. Powell by an attorney with the education and experience of her attorney is \$3,200.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this de novo appeal to the County Court of Law from Justice of the Peace Court in this forcible detainer lawsuit.
2. Pursuant to [Section 24.005 of the Texas Property Code](#), Onion Creek was required to give Ms. Powell a notice to vacate before filing this case, which it did not do.
3. Onion Creek did not show that Ms. Powell violated her lease, so Onion Creek takes nothing from Ms. Powell in this case.
4. Ms. Powell did not violate her lease because she paid her rent in September 2010.
5. Onion Creek cannot evict Ms. Powell for nonpayment of September 2010 rent, because she offered the rent and Onion Creek refused to accept it.
6. Ms. Powell is a person with disabilities as defined by the state and federal Fair Housing Acts ([Tex. Prop. Code § 301.003\(6\)](#); [42 U.S.C. § 3602\(h\)](#)), and she is regarded by Onion Creek as having disabilities.
7. Onion Creek cannot evict Ms. Powell for late payment of September 2010 rent because its refusal to accept her payment is a denial of her request for a reasonable accommodation of her disabilities and therefore a violation of the state and federal Fair Housing Acts ([Tex. Prop. Code § 301.025](#); [42 U.S.C. § 3604\(f\)\(2\)](#), and [\(3\)\(B\)](#)).
8. Onion Creek cannot evict Ms. Powell for late payment of September 2010 rent because to do so would be a violation of the state and federal Fair Housing Act provisions on reasonable accommodations ([Tex. Prop. Code § 301.025](#); [42 U.S.C. § 3604\(f\)\(2\)](#), and [\(3\)\(B\)](#)).
9. It is a reasonable accommodation of Ms. Powell's disabilities under the state and federal Fair Housing Acts for Onion Creek to accept her rent payment on or after the third of each month until the fifteenth of the month, with no late fees or filing of an eviction case ([Tex. Prop. Code § 301.025](#); [42 U.S.C. § 3604\(f\)\(2\)](#), and [\(3\)\(B\)](#)).
10. Onion Creek waived its right under Texas law to evict Ms. Powell for late payment of September 2010 rent because it had a pattern and practice of accepting late rent from her and did not tell her that it would no longer accept late payments.

11. Onion Creek cannot evict Ms. Powell for late payment of September 2010 rent because of her reliance on its stated policy to accept rent until the 15th of the month from tenants who receive regular payments from the Social Security Administration.

12. Onion Creek cannot evict Ms. Powell for late payment of September 2010 rent because of her reliance on their agreement when she applied for tenancy with Onion Creek to accept rent from her on or after the third of the month.

13. Onion Creek cannot evict Ms. Powell for late payment of September 2010 rent because that is in violation of its policy and its agreement to reasonably accommodate Ms. Powell's disabilities by allowing her to pay on or after the third, until the fifteenth of the month.

14. Onion Creek retaliated against Ms. Powell in violation of the [Texas Property Code, Section 92.331](#), by filing this eviction case as a result of her complaints for repairs, and therefore pursuant to [Section 92.335 of the Texas Property Code](#), Onion Creek cannot evict Ms. Powell.

15. Ms. Powell is the prevailing party and entitled to recover court costs as well as attorney's fees under the lease.

16. Onion Creek takes nothing from Ms. Powell.

This constitutes the Court's Findings of Fact and Conclusions of Law. If a Finding of Fact is more appropriately considered a Conclusion of Law or a Conclusion of Law is more appropriately considered a Finding of Fact, they shall be considered as such without regard to their designation otherwise.

Signed this the 6th day of January, 2011.

<<signature>>

The Honorable Eric Shepperd County Court at Law, Number Two Travis County, Texas